THOMPSON COBURN LLP

One US Bank Plaza
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000
www.thompsoncoburn.com

March 10, 2008

Joseph M. Kellmeyer
314-552-6166
FAX 314-552-7166
EMAIL jkellmeyer@
thompsoncoburn.com

VIA FEDERAL EXPRESS AND E-MAIL

Cheryl L. Newton
A-18J
Acting Director of Air and Radiation Division
United States Environmental Protection Agency, Region V
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: February 22, 2008 Request to Provide Information directed to Veolia

Dear Ms. Newton:

This firm represents Veolia ES Technical Solutions, LLC ("Veolia") with regard to the February 22, 2008 Request to Provide Information Pursuant to the Clean Air Act ("Request for Information") that Veolia received from the United States Environmental Protection Agency, Region V ("USEPA").

As you know, the Title V permit application for the Sauget facility was initially timely filed on September 6, 1995. The application was deemed administratively complete in October, 2005. At the request of USEPA, Region 5, Veolia submitted a new Title V permit application on May 2, 2007. This application was deemed administratively complete on June 13, 2007. Over the last 13 years, first the Illinois Environmental Protection Agency ("IEPA") and more recently the USEPA has taken on the role as the lead agency involved in evaluating the Title V application. Throughout the years, Veolia has fully cooperated in the various, sometimes duplicative, sometimes conflicting, demands of both agencies. Veolia is hopeful that the most recent Request for Information signals that the Title V review process is nearing completion. Obviously, no party is more interested in the timely completion of the process than Veolia since the Title V permit will directly effect its operations. With this in mind, Veolia intends to respond to the Request for Information in a timely fashion and provide USEPA with the most complete and accurate information obtainable concerning the operation of the incinerators at its Sauget facility.

Unfortunately, as reflected in the affidavit (attached hereto as Exhibit 1) of Craig Doolittle, the environmental consultant who will actually develop the Comprehensive Performance Test ("CPT") plan, conduct the testing and develop the data, USEPA's Request for Information has certain requirements that are not reasonably feasible and could very well compromise the very objective the USEPA hopes to achieve through the Request for Information. Rather than risk the delay of retesting or the further delay of seeking judicial relief, Veolia believes it is in the interest of all parties to expediently address those portions of the Request for Information that pose serious concerns in order to determine whether a feasible alternative may be reached. In this regard and in light of the USEPA's relatively recent role as the lead agency in this matter, it may be helpful to provide a brief recap of Veolia's long history of testing at the site.

History of data in lieu of testing at the Veolia facility

As background, Veolia operates three incinerators, Incinerators 2, 3 and 4, at its facility in Sauget, Illinois. The compliance date for 40 C.F.R. Part 63, Subpart EEE, Interim MACT Standards, for the three incinerators was September 30, 2003. On January 30, 2003 Veolia was granted a nine-month extension for compliance with this rule from IEPA, which resulted in a compliance date for the Veolia facility of June 30, 2004.

As required by 40 C.F.R. §63.1207(e)(1)(i), Veolia submitted a CPT Plan "at least one year before" testing was scheduled to begin. A CPT Plan was submitted for all three incinerators on December 29, 2003 to the IEPA and to USEPA.

IEPA agreed with Veolia's request for a six-month extension for conducting the initial CPT for Incinerators 2/3 and Incinerator 4 in a letter dated December 23, 2004. Hence, execution of the CPT Plan was now to commence before June 30, 2005.

A second six-month extension request from Veolia was submitted on April 20, 2005, but it was verbally denied via phone conversation by Mr. David Bloomberg in June 2005. Mr. Bloomberg stated that Veolia was a "high profile facility" and IEPA wanted Veolia to conduct emissions testing. Veolia responded that the CPT Plan stated that data in lieu of testing was to be utilized to show compliance. At that time, having received no written comments on the CPT Plan from either the IEPA nor the USEPA, Veolia followed the testing protocol as outlined in the plan. The plan stated in Section 1.2 that data in lieu of testing for the fixed hearth incinerators and the rotary kiln incinerator was to be utilized to show compliance with the applicable standards. Additionally, Section 4.1 stated that only one test would be conducted for Units 2/3 and that the operating limits established for the unit tested would be applicable to both units. Veolia has performance tested Units 2/3 in this manner since the early 1990's to show compliance with RCRA emission limits and to establish operating parameter limits for both incinerators (Section V.a.G. of the RCRA Part B Permit). When the next required performance test was to be conducted, the alternate fixed hearth incinerator was tested. Both the IEPA Bureau of Land and the Bureau of Air concurred with this testing protocol as air and land permits were issued for both incinerators after each performance testing. Subsequently, Veolia submitted a Notification of Compliance (NOC) on September 28, 2005.

IEPA subsequently strongly suggested that emissions testing be conducted in a very short time schedule on Unit 3 to confirm compliance with the metals, particulate matter, and dioxin and furan emission limits of 40 C.F.R. §63.1203(a). Pursuant to IEPA's request, in the Spring of 2006, Veolia performed the suggested testing in compliance with IEPA's short time schedule and shared the results with IEPA. Therefore, Veolia has already conducted and shared with IEPA the incinerator testing as outlined in the CPT Plan and in complete adherence to the requirements of 40 C.F.R. §63.1207(c).

Veolia takes exception to USEPA's demand in the Request for Information that Veolia not request permission to use data in lieu of testing because USEPA's demand is premature, violates Veolia's due process rights pursuant to 40 C.F.R. Section 63.1207(c)(2) and USEPA's demand is inconsistent with Veolia's current CPT Plan. Nevertheless, in an effort to avoid additional delays and subject to an agreed upon schedule with USEPA, Veolia is willing to forego its right to request permission to use data in lieu of testing if a reasonable timeframe to develop such data can be agreed upon. Obviously, Veolia reserves all of its rights and remedies in this regard should the parties be unable to reach a feasible arrangement.

USEPA's request for information by no later then July 15, 2008 is unreasonable and not feasible.

After years of Veolia sharing test data with both IEPA and USEPA, USEPA now requests a CPT Plan involving extensive testing within a timeframe of less then five months. The type of testing requested by USEPA in part is duplicative of the type of testing that was conducted in the Spring of 2006 and will be conducted again by no later then October, 2009 pursuant to the comprehensive testing required by the MACT standards. Nevertheless, in an effort to cooperate with USEPA, Veolia is willing to conduct the recently requested testing and collect such data upon agreement that such testing be conducted within a reasonable and feasible schedule.

Veolia believes that USEPA's request that such testing be conducted and such data be collected in less then five months is an unreasonable schedule that, if not modified, will greatly increase the likelihood that errors will occur. Significantly, 40 C.F.R. 63.1200 et. seq. sets forth the standards and operating requirements for incinerators that burn hazardous waste; this provision clearly reflects that an owner or operator typically will not be able to complete a CPT Plan, receive plan approval from the agency and conduct extensive testing in less then five months.

Similarly, Craig Doolittle, the environmental consultant on the project, believes USEPA's suggested time schedule is unreasonable and not feasible, and it could ultimately result in additional delay. Obviously, an unreasonably short timeframe, such as the July 15, 2008 date found in the Request for Information, increases the likelihood that errors could be made and retesting required. These practical considerations were surely among the reasons the authors of 40 C.F.R. 63.1200 et. seq. provided for more than five months for the process to be

completed. In an effort to obtain the best possible data and to avoid unnecessary and unwanted delays or appeals, Veolia respectfully requests USEPA adopt the time schedule set forth by Mr. Doolittle in the attached affidavit.

Very truly yours,

Thompson Coburn LLP

By Joseph M. Kellmeyer
Joseph M. Kellmeyer

Enclosure

EXHIBIT 1

Affidavit of Craig Doolittle

I, Craig Doolittle, being over the age of 18 and of sound mind, state and depose under oath as follows:

1. I am a Senior Program Manager at ENSR Corporation ("ENSR") and the Department Manager of ENSR's Air Measurement Department. ENSR is part of AECOM Technology Corporation ("AECOM"), a leading global environmental services provider. ENSR has approximately 2000 employees and has approximately 80 offices around the world.

2. I have been employed by ENSR for 8 ½ years and have worked as an environmental consultant for 10 years. I graduated with B.S. and M.S. degrees in Civil and Environmental Engineering from Clarkson University in Potsdam, NY. I am a registered professional engineer and have over 30 years total experience in the environmental field. I have focused on hazardous waste combustion work for approximately 20 years. In various capacities over the years, I have been involved with permitting, regulatory compliance and have managed the operations of large scale hazardous waste combustion facilities. At ENSR, I have prepared and managed approximately 100 different stack emissions and performance testing projects at hazardous waste combustion facilities and many other manufacturing processes. ENSR is one of the leading providers of combustion services to the hazardous waste industry and has supported this industry for over 25 years. ENSR specializes in providing turnkey engineering, permitting, performance testing and risk assessment services and routinely develops and manages performance testing programs for this industry. In addition, ENSR has specific expertise in the design and performance of the various stack testing and analytical programs associated with measuring air toxics emissions from a broad variety of industrial sources.

3. Recently, I was named Chairman of the Program Advisory Committee for the International Conference on Thermal Treatment Technologies, also known as the IT3 Conference. Sponsored by the Air & Waste Management Association, the IT3 Conference provides an international forum for the exchange of state-of-the-art technical information on thermal treatment technologies and involves participants from over 20 countries. The conference focuses on the safe management of waste streams amenable to thermal treatment processes. Thermal treatment involves the use of high temperatures in the processing of waste feedstocks. These technologies include traditional combustion systems, such as incinerators, cement kilns, gasification systems, plasma arc, mechanical heat treatment, and pyrolysis. In my role as chairman for the next two years, I will lead the conference's direction and agenda.

4. I am familiar with Veolia ES Technical Solutions, L.L.C.'s facility located at 7 Mobile Avenue, Sauget, Illinois. I have been to the facility on a number of occasions and have overseen prior testing at the facility. ENSR has performed approximately 10 different performance testing programs on the incinerators at Sauget, including performing the annual relative accuracy testing (RATAs) of the facilities continuous emissions monitors for the last several years. I have either served directly as the project manager or relied on other ENSR project managers who report directly to me to conduct these programs. To my knowledge, there is no basis to challenge the integrity of the work ENSR performed. With the exception of the RATAs, which are required to be conducted annually, each of these programs were designed and conducted to assess and evaluate performance under the HWC MACT program using United States Environmental Protection Agency ("USEPA") approved methods in effect at the time the work was conducted and performed to generally accepted industry standards and quality. These test methods included EPA Method 0050 – particulate matter and HCl/Cl_2, EPA Method 29 – heavy metals and EPA

Method 23 - dioxins and furans. In addition, I have reviewed historical trial burns performed by other qualified stack testing firms (Midwest Research, Inc), that were agency approved RCRA trial burns, to assess their suitability for use, along with ENSR's own testing work, to address compliance with the HWC MACT standards through the data in lieu of provisions provided for in these regulations. As stated previously, I know of no basis to challenge the integrity of these actual data either.

5. I have also been working on the Comprehensive Performance Test Plans ("CPT") for the facility. The focus of this work is to comply with existing requirements, which necessitate CPTs and testing to be completed by October 14, 2009. Though that deadline is roughly eighteen months away, this is the normal time frame to begin test plan preparation so that the actual tests can be performed on time to meet the regulatory deadlines. This schedule is also consistent with our practice for the clients we serve and is generally true for the entire industry regulated under this rule.

6. I have reviewed the USEPA Region V's Request for Information dated February 22, 2008. In essence, Veolia is requested to accomplish the following actions by July 15, 2008:

- Prepare and submit three CPT Plans to the USEPA for each of the incinerators at Sauget, including the required Continuous Monitoring System Performance Evaluation Test (CMSPET) Plans for each unit as well;
- Receive and respond to USEPA's comments on the CPT Plans (which ordinarily takes several months, but can take up to a year or more to receive),
- Obtain final approval of the CPTs from the USEPA,

- Prepare for the CPT, including mobilizing needed feeds and spiking materials, preparing and shipping all test equipment, making arrangements with analytical laboratories and performing the CMSPET,
- Perform three CPTs, each requiring as much as a full week to complete,
- Obtain the test results from the laboratory, evaluate these results and prepare and submit the test report and Notification of Compliance to the USEPA.

7. Veolia has asked me if the requested testing, by the July 15, 2008 deadline, is feasible. In my opinion, the USEPA's request, in the given time frame, is neither feasible nor appropriate given the amount of time needed to not only complete approvable plans, but also to conduct testing and submit the required reports. For a commercial facility of this complexity, USEPA's expected schedule is unprecedented in my experience. My reasoning for this statement is as follows:

8. The CPT Plans are complex and prior to them being conducted, require several months to develop in sufficient detail in order for them to be approvable by a regulatory agency. The first step in preparing the CPT involves collecting sufficient facility related information to fulfill the information requirements stipulated in the regulation (i.e., 40 CFR § 63.1207). In addition, current information on waste streams managed at each of the units will need to be compiled and summarized so that what each unit treats is well characterized and the feeds that will be used during the CPT will be representative. Since these units treat many waste streams that differ both chemically and physically, this compilation generally takes several weeks by itself to complete. Then, from this compilation, detailed plans for testing need to be developed to establish the desired feed and operating conditions during the CPT that will then enable Veolia to establish the required waste feed and operating parameter limits (OPLs) required to show

ongoing compliance with the HWC MACT standards. This entails identifying the desired feeds, calculating their feed rates, determining likely emission rates and assisting the facility in selecting the desired operating conditions so that the regulatory requirements for establishing each OPL can be established. Due to the complexity of setting each OPL, it will likely be necessary to conduct testing at more than one feed or operating condition, all of which needs to be worked out in sufficient detail so that each unit can be operated at these desired conditions for sufficient time to conduct the emissions testing. Once details of the test design have been finalized, data quality objectives are established and the sampling and analysis approaches and methods must be finalized. These details are incorporated into a specific Quality Assurance Project Plan ("QAPP"). This portion of the CPT Plan has extensive detail describing the sampling and analysis methods and related quality assurance/quality control ("QA/QC") measures that will be followed by the facility, the stack testing firm and the analytical laboratories involved with the CPT. Once draft plans have been written, internal reviews are required with facility operations staff and planned subcontractors (e.g., specialty analytical labs) to review and finalize plan details to assure the tests can be performed as written and the results will meet data quality objectives for the program.

9. The CPTs for incinerators #2 and #3 will be similar. But the Plan for #4 will be different because Units 2 and 3 are different technologies (Fixed Hearth) from Unit 4 (Rotary Kiln), employ somewhat different air pollution control systems, feed different wastes and operate under different conditions. These differences necessitate separate and distinct test designs that will require specific feed rates, spiking rates, operating conditions and test schedules for each of the unit types. In addition, stack sampling ports and access to these ports differ, thus requiring

separate and distinct scheduling and sequencing of testing activities. Thus, separate CPT Plans need to be developed.

10. Once the Plans are submitted, they must go through agency review and approval procedures. Typically, agency review and approval for one affected source can easily take a year or more. For that reason, Veolia asked ENSR to begin the CPT process now in order to meet the October 2009 deadline. The applicable MACT regulations (40 C.F.R. § 63.1207 et seq) provide timeframes for submitting such Plans and performing the needed testing. The regulations stipulate that CPT Plans must be submitted at least one year prior to conducting them to allow for agency review and approval. The regulations further stipulate a time frame (40 CFR § 63.1207(e)(1(A)) of 9 months for the agency to notify facilities of their intent to approve or disapprove the CPT Plan. It has been my experience that CPT Plan reviews by regulatory agencies follow traditional procedures starting with an administrative completeness review, followed by a technical review. Both of these reviews are typically iterative processes that are managed through agency issued Notice of Deficiency letters that require response and additional information to be submitted. Normally, no matter how complete a facility feels their CPT Plan is on submittal, the Agency provides input, typically requiring several Plan revisions before approval is given to conduct the actual testing. Historically, agencies have often spent several years reviewing trial burns under RCRA due to their complexity and the need for a thorough and complete Administrative Record to be on file supporting agency decisionmaking. Like the RCRA program, it has been my experience under the HWC MACT CPT Plan review process that agencies do not expedite their review and approval procedures for the very same reason. In fact, in my experience it is essential for complete and thorough reviews of the Plan(s) to occur for both the agency's sake and to avoid putting Veolia at risk of an unidentified problem not

being discovered until it is too late, putting the entire CPT and the facility's ability to comply with an appropriate set of limits in jeopardy.

11. Once agency approval is granted, performing the actual CPT requires extensive pre-planning, scheduling and logistics activities to occur before they can be conducted to assure proper execution, typically taking several months for just one unit. Due to the general uncertainty in the timing of these approvals, facilities and their stack testing contractors do not begin this process until approval is given. Also, given the very nature of these types of programs, only certain testing and analytical firms are truly qualified to conduct them. Since many facilities subject to the HWC MACT regulations are currently in various stages of planning and performing these programs, availability of trained stack testing crews, testing equipment and laboratory capacity must be planned several months in advance just to secure scheduling commitments. Also, from a pure logistics perspective, many preparatory activities must take place well in advance of the actual field program to assure the CPT is performed as intended. For example, testing equipment must be properly cleaned, packaged for shipment and shipped to the facility. Glassware cleaning for stack testing can take up to two weeks to complete before it can even be packaged for shipment to the facility for use in the test. In addition, test methods like EPA M 23 for Dioxins and Furans require specific sample train test media to be prepared with pre-spiked compounds to address program QA/QC requirements. Last, but not least, facilities must accumulate the necessary feed and spiking materials and conduct comprehensive preparations of their units for the test program, such as instrument calibrations that are required as part of addressing the CMSPET requirements as stipulated in 40 CFR § 63.8(e)(4) and 1207(b)(1). In order to assure adequate availability of testing staff, equipment and laboratory capacity to process samples within their sample holding times and make sure that each CPT is

conducted so that it meets 100% of the performance and quality requirements, only one unit at a time is tested. Attempting to perform simultaneous test programs on multiple units and maintain quality performance, with insufficient lead time is a recipe for failure, which is an unacceptable outcome for all involved.

12. Even on an expedited basis and doing one incinerator at a time, it would reasonably take two months to prepare the CPT Plan. Then, once approval of the Agency is obtained, it would take one month or more to prepare for and scheduled the CPT, one week to conduct the testing and another several weeks to get the results of the tests summarized (the regulations allow submittal of results up to 90 days after completion of the CPT).

FURTHER AFFIANT SAYETH NOT.

Craig Doolittle

SWORN AND SUBSCRIBED
Before me this 10th day
of March, 2008.

Debra K. Shoji

Notary Public

My Commission Expires:
2/2013

DEBRA K. SHOJI
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
February 8, 2013